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Civil society organisations and contemporary social markets: some lessons from the Dutch experience¹

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This article examines the role played by civil society in the governance of the social sector. In particular it addresses the question of how the emergence of the 'social market model' affects the role that civil society organisations play in the governance of social services. The challenge of social markets is to introduce free choice and competition, without endangering the social values and objectives of the organisations involved. A strong involvement of civil society in the organisations is helpful for this purpose. However, as will be demonstrated by the case studies underlying this article, the emergence of social markets implies a change in civil society involvement: from direct involvement in the provision of social services, to indirect watchdog involvement. The nature of the civil society groups themselves has also changed. The new watchdog organisations are not vested in religion or ideology, but rather single-issue client organisations. In this article we argue that there is nothing wrong or contradictory in the government actively stimulating the involvement of such client organisations in the governance structure of the social sector. Therefore it should adopt new legislative standards giving client representation groups a formal status in the legal structure of 'social enterprises'.

I. INTRODUCTION

In most welfare states, civil society organisations have always played a major role in the governance of social (security) services. In fact, such organisations can be seen as a product of a particular mode of governance, which is distinct from both formal state governance and market regulation. However, nowadays many civil society organisations are in trouble. One of the reasons for this is the diminishing legitimacy of such organisations caused by, among other factors, secularisation, 'depillarisation' (political and denominational desegregation of society), and individualism. In our view, the emergence of social markets is another relevant factor. In such markets a variety of institutions compete with each other for certain favours which government contracts, certain rights or licences, fiscal privileges etc offer. These institutions are not only not-for-profit organisations operating in the domain of civil society, but also private commercial organisations. As a result of this competition, not-for-profit organisations are under pressure to act like commercial entrepreneurs, by introducing professional management techniques, enlarging their scales of operation and entering into new,

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profitable activities. In doing so they lose their original flavour and character. Interestingly, the social market model is not only unfavourable for civil society. It also gives rise to new types of organisations acting on behalf of clients, thereby representing 'consumer interests'; such organisations may have a high degree of grass roots participation. The role of these new organisations and their impact upon the quality of the social markets is constantly evolving.

The first aim of this paper is to discuss how the social market model threatens traditional not-for-profit organisations and simultaneously gives rise to new civil society initiatives. Our theories in this respect are illustrated by two case studies drawn from the situation in the Netherlands. We will look at the demise of two traditional organisations and the emergence of two new initiatives operating in the social housing sector and in the home care sector. These are:

- Rochdale, an Amsterdam housing foundation which ran into trouble after it exceeded its commercial ambitions, versus Woonbond, a new alternative interest group representing the interest of tenants in the rental sector; and
- Meavita, a commercial home care group which arose out of the merger of some former civil society organisations and which collapsed in 2009, versus Per Saldo, a new initiative for the protection of the interests of clients in the home care sector.

The second aim is to look at the lessons we can learn from the case studies and to come up with some ideas as to how the role of civil society organisations can be protected; how can the legal framework play a positive role in protecting the valuable function of civil society organisations in the social market?

This article kicks off with a brief elaboration of the key concepts used in this article, ie civil society organisations and social markets (chapter II). It then moves on to describe the theoretical and methodological background of the case studies carried out (chapter III). The case studies themselves and the outcomes are presented separately in the next chapter (IV). The last chapter (V) discusses a number of implications for the governance of social markets, which can be drawn from our case studies.

II. CONCEPTUALISING 'CIVIL SOCIETY ORGANISATIONS' AND 'SOCIAL MARKETS'

The two main concepts which were used in the introduction, ie 'civil society organisations' and 'social markets' are both illusive and controversial. Illusive in the sense that they accommodate a rich variety of meanings and controversial because they are often hijacked for political purposes. We have come up with some admittedly broad but hopefully neutral definitions.

Civil society organisations

The term civil society organisation refers to any legal person (either governed by private or by public law) outside the formal state bureaucracy who represents a collective (non-individual) interest and who does not aim to make financial profits.² Within this definition, it is thus not important whether the organisation is based on religion or

² For analogous definitions of the concept of civil society see: J. Cohen & A. Arato, *Civil Society and Political Theory* (MIT Press, Massachusetts, 1992), IX; D. Rueschemeyer, M. Rueschemeyer & B. Wittrock, *Participation and Democracy East and West: Comparisons and Interpretations* (M.E. Sharpe, Armonk, 1998), 18. See also: L.M. Salamon, 'Putting the Civil Society Sector on the Economic Map of the World', (2010) 81 *Annals of Public and Cooperative Economics* 2, 168.

any ideology, or merely protecting the self-interest of a group of individuals. What is important is that the organisation is not organised by the state and not for profit. In this way, the whole array of voluntary organisations, civic initiatives, organised pressure groups, charity foundations, unions and employer organisations, etc are covered.

Social markets

The term social markets is derived from the concept of quasi-markets. Quasi-markets in the social sector have first been described by Julien le Grand in 1991 in the wake of reforms that were advocated by the first Blair government in the United Kingdom.³ These reforms were based upon the expectation that the quality, responsiveness and efficiency of the social sector could be improved by allowing for competition between the agencies and by promoting the freedom of choice for the clients. This expectation has led many governments to introduce more market-styled social sector reforms. In social markets various agencies, public and private, commercial and not-for-profit compete for subsidies, government contracts, exclusive licences, fiscal privileges, or cash-for-care vouchers. Profit is not necessarily the only factor which determines the outcome of the competition. Much depends on the success of the organisations to obtain government privileges. For this it is necessary that they enter into co-operative networks, not only with the government as chief regulator or principal, but also with the clients as the 'buyers' of the social services involved.

In economic literature the concept of the quasi-market has also attracted criticism. No market is perfect and therefore the term is too indistinct. Also, it is too normative, as if it wants to tacitly condone the introduction of market forces in the public sector.⁴ Without devaluing this criticism this article employs the term social markets to connote a mode of governance whereby the government organises social services through third parties for the purpose of introducing competition between these parties and enhancing the freedom of choice for citizens as buyers of these social services. A characteristic of the social market model is that the parties involved compete for certain government rights; be it subsidies, grants, licences, fiscal privileges, contracts, etc. This gives rise to a commercialisation of the activities involved. Another characteristic is – nonetheless – that the commercial activities of the players in the social markets are closely regulated and monitored by the government in order to realise policy objectives: social protection, a high level of services, cost efficiency, etc.

III. THEORETICAL AND METHODOLOGICAL REMARKS

The introduction to this article might suggest there is a direct link between the demise of traditional civil society organisations and the emergence of social markets; in the good old days of the post-war welfare states such organisations were flourishing, but since neoliberal governments introduced market forces they are gradually disappearing. Of course this is a caricature of the real situation. The German sociologist Ingo Bode has rightly pointed out that such narrative fails to access the contradictory and com-

³ J. le Grand, 'Quasi-Markets and Social Policy', (1991) 408 *The Economic Journal* 101, 1256-1276; J. le Grand, *The Other Invisible Hand: Delivering Public Services through Choice and Competition* (Princeton University Press, Princeton, NJ, 2007); See also: T. Brandsen, *Quasi-Market Governance: an Anatomy of Innovation* (Lemma, Utrecht, 2004); R. Flynn, & G. Williams (eds), *Contracting for Health: Quasi-Markets and the NHS* (Oxford University Press, Oxford, 1997).

⁴ Cf R. McMaster, 'A Veblenian-inspired critique of the "quasi-market" concept', (2001) 28 *International Journal of Social Economics* 9, 710-724.

plex nature of the new governance regime which – following broader evolutions in the political economy of the late modern societies – is emerging in Western Europe.⁵ He comes to the conclusion that while in Western European countries ‘voluntary organisations’ have been important in the past, their role is now changing as a result of an entire shift in governance structures that has been taken place over a longer period of time. This shift involves the introduction of ‘new resource management’ by civil society organisations, ‘new patterns of communication strategies’ and a ‘process of disorganisation of the public/private welfare mix’. The picture that emerges is that of a highly complex and changeable governance structure in which civil society organisations have to find their way between pure market opportunism and the old firm alliances with the public welfare state. In doing so, they invest in networking, lobbying for better quality, advertising to gain advantages over profit organisations working in the same field, and developing projects which attract stakeholders. In this process of changing roles some organisations do well and others perish.

Bode’s description of the complexities pertaining to the governance structure of contemporary social markets coincides very much with the picture that emerged in our own research on the foundations of the regulatory welfare state.⁶ We happily take his analysis as a starting point and see how social markets impact upon the dynamics of civil society organisations. Nonetheless, as mentioned in the introduction, we are particularly interested in finding out how commercialisation affects the character of civil society organisations. Although it may be true that commercialisation is not the sole factor causing a change of roles for civil society, this does not mean that it is irrelevant. It merely has to be studied without turning a blind eye to other institutional changes.

The underlying notion of the case studies is that ‘inside organisations’ that play a role in the governance and administration of the social sector threaten to lose their unique identity as civil society organisations once they mimic the character of commercial entrepreneurs. One of the reasons for this may be that the organisation and character of the activities are simply no longer in line with the interests of the citizens they are supposed to represent. The citizens are, consequently, inclined to organise their own interests in a separate way, through new ‘outside organisations’ which are not part of the social sector bureaucracy. Within market terms, such civic initiatives are very much like consumer pressure groups, but within the framework of the hybrid and heavily regulated social markets. They can also be looked upon as new civil society organisations, which play a crucial role in the governance of the social sector as a whole. The purpose of the case studies is to offer illustrations of how the commercialisation of activities affects the character and role of some old and new civil society organisations in practice and to describe the institutional changes that have taken place.

The theoretical discourse of consumerism in social markets is usually associated with the idea of individual consumers driven by maximising their own preferences in the market place through freedom of choice.⁷ This consumerist conception of social services also underlies Le Grand’s notion of quasi-markets, wherein passive recipients of

⁵ I. Bode, ‘Disorganized welfare mixes: voluntary agencies and new governance regimes in Western Europe’, (2008) 16 *Journal of European Social Policy* 4, 346-359.

⁶ Cf G. Vonk & A. Tollenaar, *Social Security as a Public Interest: a Multidisciplinary Inquiry into the Foundations of the Regulatory Welfare State* (Intersentia, Antwerp, 2010).

⁷ See for instance: M. Fotaki, ‘Towards Developing New Partnerships In Public Services: Users as Consumers, Citizens and/or Co-Producers in Health and Social Care in England and Sweden’, (2010) 89 *Public Administration* 3, 933-955; J. Clarke, J. Newman & N. Smith, *Creating Citizen-Consumers: Changing Publics and Changing Public Services* (Sage, London, 2007).

social services are transformed into empowered consumers.⁸ While Le Grand's analysis centres around the consumer as an individual actor, in this article we are interested in the collective aspects of consumerism. As we will illustrate, social markets may strengthen the rise of new types of collective consumer organisations that behave like politically engaged pressure groups and which can be seen as modern types of civil society organisations.⁹

Our case studies concern two negative stories and two positive ones. The first relates to organisations that are involved in the provision of social services (in that way qualified as *insiders*) and the second to new client organisations (qualified as *outsiders*).

Insiders: Meavita and Rochdale

The negative stories concern *Meavita* and *Rochdale*. These organisations are characterised by the fact that they grew out of various mergers of pre-existing civil society organisations. *Meavita* became the largest Dutch home care company operating mainly in the Northern provinces, employing 20,000 members of staff. Its ambitions were fully commercial. However, the new health care giant was increasingly caught up in rumours about financial and organisational mismanagement, expensive advertising, conflicts and scandals.

The story of *Rochdale*, a social housing cooperation operating in the city of Amsterdam, is to some extent comparable to that of *Meavita*. *Rochdale* also went through a process of mergers and changing management structures. Officially, it has a not-for-profit status, but increasingly entered into the commercial real estate business. The commercial activities started to overshadow everything else, until the whole thing burst revealing scandals about mismanagement, excessive pay for the managers, wrong investment in expenses offices and rumours about corruption.

The case studies of these two organisations should cast light on at least three questions:

- What are the characteristics of the 'social markets' in which *Meavita* and *Rochdale* operated?
- To what extent could *Meavita* and *Rochdale* still be qualified as civil society organisations in the sense of our definition?
- Were the main reasons for the downfall of both organisations linked to the commercialisation of their activities or were other factors involved as well?

For the purposes of the case studies the concept 'commercialisation' is operationalised with reference to three elements, ie a) profit motive b) marketing strategies and c) expansion and diversification.

Outsiders: Per Saldo and Woonbond

In contrast to the above-mentioned stories neither *Per Saldo* nor *Woonbond* are involved in the organisation or provision of social services; they are set up as pressure groups

⁸ J. Le Grand, *Motivation, Agency, and Public Policy: of Knights and Knaves, Pawns and Queens* (Oxford University Press, Oxford, 2003). See also: A. Giddens, 'Living In a Post-traditional Society', in U. Beck, A. Giddens & S. Lash (eds), *Reflexive Modernisation: Politics Tradition and Aesthetics in the Modern Social Order* (Polity Press, Cambridge, 1994). For a critique of the individualistic consumerist model of social service provision, see for instance: C. Needham, *Citizen-Consumers: New Labour's Marketplace Democracy* (The Catalyst Forum, London, 2003).

⁹ I. Shaw & A. Aldridge, 'Consumerism, Health and Social Order', (2003), 2 *Social Policy and Society* 1, 37. See also: Y. Gabriel & T. Lang, *The Unmanageable Consumer: Contemporary Consumption and Its Fragmentation* (Sage, London, 1995).

representing the interests of clients. In the case of *Per Saldo* the clients are the receivers of personal care budgets under the Dutch Extraordinary Medical Expenses Act and the Social Support Act. Personal budgets were introduced in the 1990s in order to allow clients to buy their care services themselves instead of relying on benefits in kind offered by the health and home care institutions. The budgets can be seen as typical social market instruments, since they allow freedom of choice for the consumers and competition between care providers. In the case of *Woonbond* the clients are tenants in rental accommodation.

Per Saldo and *Woonbond* are successful organisations. Their long-term existence is well-guaranteed and they are increasingly involved in the governance of the health/home care and social housing markets. Both organisations arose out of civic initiatives. As they can be seen as clients groups representing the interests of the consumer, they are in a sense the by-product of the same commercialisation that led to the downfall of *Rochdale* and *Meavita*; after all, consumer pressure is a typical feature of the market.

The case studies of these organisations address the following four questions:

- What is the background of the organisations and to what extent do they qualify as civil society organisations within the meaning of our definition?
- To what extent can the organisations be qualified as consumer organisations within the meaning of economic doctrine?
- To what extent are the organisations entrusted with a role in the new governance of the social sector, thereby possibly losing the status of pure outside organisations?

IV. THE OUTCOMES OF THE CASE STUDIES

A. General background: the housing and home care sectors as social markets

In the Dutch welfare state, the home care infrastructure is ultimately a government responsibility. It is considered part of the social security system. In the past, home care services were provided through a network of home nursing organisations which were often organised on a religious or ideological basis. Over time these organisations became increasingly subject to government control and in a sense became part of the semi-public administration of the sector. In the 1980s free market systems made their entry into home care. New care agencies, which had no roots in the old home nursing organisations, came into being. More recently, legislative reforms deliberately created a framework for competition among the various private, voluntary and public agencies involved in home care. The state thereby operates as a funder of welfare services who purchases services from a range of competing private, voluntary and public provider organisations. Funds are allocated through a process whereby provider organisations bid for state contracts. The funds for home care services are also allocated by the patients or clients themselves. They are given an earmarked budget, a voucher or a so-called *personal budget* which can be used to purchase care the way they choose and from a provider of their choice.

We call this type of welfare governance *markets*, because monopolistic state providers are replaced with independent provider agencies that compete with one another. They are *social markets* because they are deliberately created by state actors to fulfil social objectives. These markets are created under the assumption that open competition

between provider agencies will bring down the costs of health care services and thus maximise the provision of social security.

The housing sector also bears characteristics of a social market, but for different reasons. The Netherlands have a long-standing tradition of providing affordable housing for the poor through so-called housing associations. These organisations as well as a religious or ideological basis became more and more subject to government control. A social housing market was created in the beginning of the 1990s, when the financial ties between the associations and the government were severed. Since then, the associations have been financially independent and have faced new factors in their investment decisions; they can only fund projects if they can raise enough money. However, the social housing market remains highly regulated, with the government setting quality standards and targets. As a result, the associations are dependent on market forces to raise the revenue needed to meet the social targets set by the government. Although the associations are still not geared to profit-making (in fact their legal status as foundations does not allow this), they have to diverge activities in order to find the resources for less profitable social housing projects. Often, separate legal structures are set up to run the commercial activities, but in practice it is apparently not always easy to make a sharp distinction between the funds for commercial and social activities.¹⁰

What is clear for both home care and the social housing market is that the setting offers a fertile breeding ground for commercial activities. This is, for example, reflected in the way the organisations are managed. The increased financial independence of the Dutch housing associations has radically changed management styles. For over half a decade the associations were run like bureaucracies, with standardised work methods, whereas they now need managers to be able to operate as businessmen, planners and idealists.¹¹ This financial independence also spurred a wave of fusions between associations. Their number decreased from 1037 in 1990 to about 701 in 2000.¹² Their larger size presumably makes it easier to procure loans and deliver economies of scale. It also means the organisations need a larger bureaucracy, which causes a greater distance between the managers of housing associations and the tenants. As a matter of fact, similar developments took place in the administration of the home care sector. However, the process in which the scale of the organisations have enlarged reportedly started earlier under the influence of the way they were managed by central government. The number of active organisations dropped from 1450 in 1970 to merely 113 in 1996.¹³ Yet, the market-oriented reforms have resulted in a further stream of mergers, with the organisations being forced to focus on costs and efficiency management.¹⁴

¹⁰ M. Leuvensteijn & V. Shestalova, *Investeringsprikkels voor Woningbouwcorporaties* (in English: *Investment Incentives for Housing Associations*) (Centraal Planbureau, The Hague, 2006).

¹¹ Cf H. Ter Borgt, 'Financieel boekhouden bij woningbouwcorporaties: van boekhouding naar beleid' (in English: 'Financial Bookkeeping in Housing Associations: from Bookkeeping to Policy'), (2005) 3 *Maandblad voor Accountancy en Bedrijfseconomie* 3, 60-69.

¹² A. Ouwehand & G. van Dale, *Dutch Housing Associations: A Model for Social Housing* (DUP Satellite, Delft, 2002).

¹³ Cf P. Van Lieshout, 'Identiteit in zorg en welzijn' (in English: 'Identity in Health Care and Welfare'), in J.P. Balkenende & T.J. van der Ploeg (eds), *Behoud en vernieuwing van identiteit* (in English: *Preservation and Reform of Identity*) (Lemma, Utrecht, 1999), 61-72.

¹⁴ Market-oriented reforms have, however, also created new, smaller home care organisations.

B. The demise of inside organisations: the (hi)stories of Meavita and Rochdale

Meavita

Meavita Nederland was the result of a managerial merger of the four home care agencies active in different parts of the Netherlands. These organisations had historical ties with former home nursing organisations, but this is as much as could be said about the links of *Meavita* with civil society; the ambitions of the new organisation were fully commercial. As from January 2007, the four care organisations gathered under one board of directors. This made *Meavita* the second largest home care company in the Netherlands, working for sixty municipalities and one-third of all Dutch care administration offices.

In March 2009, *Meavita* filed for bankruptcy, scarcely two years after its establishment. At that time, the organisation had more than 20,000 employees. It served approximately 100,000 clients and grossed an annual turnover of half a billion euros. The downfall of *Meavita* was claimed to be caused by mismanagement. The subsidiary organisations were adrift: there were reports of administrative chaos, there were long-neglected financial problems, contracts were entered into below cost price, and millions were squandered on hazardous projects. According to audits performed in 2007 the financial situation was very alarming. By the middle of 2008, the organisation had negative assets of 10 million euros, compared to positive assets of 70 million euros in 2006. In February 2009, the liquidity of the organisation proved to be so critical that payments of salaries and other debts were not guaranteed.

After its moratorium, *Meavita* was dismantled and its subsidiary companies became autonomous once again. The subsidiary companies closed down different branches and some of them were taken over by other home care agencies. In March 2009, the bankruptcy of two subsidiary companies followed. The Dutch government was placed in a dilemma. Given the political logic of liberalisation and recently introduced market strategies state intervention was undesirable. However, municipalities wanted to know what would happen to all their citizens who received home care if *Meavita* ceased to exist. The care administration offices also feared that the health care funds would lose millions. Eventually the Dutch Patient and Consumer Federation, the NPCF, was prepared to set up two foundations in order to take over tasks of health care providers. The two foundations took over the entire staff of *Meavita* that was left. The regional health care organisations were restarted with government aid that amounted to 37 million euros.

Rochdale

Rochdale was established back in 1903 during the wave of housing associations being set up in the wake of the 1901 Housing Act. In 2003, the current organisation was created after a major merger of Rochdale and another housing association, *Patrimonium*. Rochdale manages around 40,000 houses in Amsterdam and the surrounding area, making it one of the larger housing associations in the Netherlands, worth well over a billion euros. The merger also brought in a new chairman, under whose responsibility the housing association focused more and more on profit-making activities, officially in order to finance social not-profitable housing projects in practice, however, these were activities in their own right. In 2008, the extravagant chairman, internally referred to as the sun king, gained notoriety with a well-publicised case of mismanagement and fraud. What came to light were dodgy deals, bad supervision and self-enrichment. Many projects were identified as suspicious, as e.g. properties were being sold only a month after their purchase for half the price to friends of the chairman. As a result, the chairman was fired and the entire supervisory board resigned. After this scandal the organisation aimed to start afresh and launched a thorough investigation of the internal processes and market transactions in the previous years, putting the results up for public scrutiny. It also vowed to steer the organisation back to its core activities, namely the provision, maintenance and construction of social housing and the development of safe, clean and friendly neighbourhoods. In 2008, Rochdale started distancing itself from projects that did not fall within the scope of this core mission.

What is interesting in these stories for us is not so much the failing of *Meavita* and *Rochdale* as commercial enterprises, but their demise as civil society organisations. Admittedly, *Meavita* never had the character of a civil society organisation from the very start, but the fact that after its bankruptcy some of its activities were taken over again by some independent, not-for-profit patient organisations shows that civil society never lost touch with the company (or rather the interests it was supposed to serve). *Meavita* just failed to represent the ties between the civil society and the home care sector.

The case studies reveal that in social markets, commercialisation can take over in all respects, to the detriment of the traditional ties with civil society and of the interests of the citizens that it represents.

Firstly, both organisations were heavily engaged in marketing. For example, in an attempt to establish itself firmly in the world of real estate stakeholders, *Rochdale* treated the private partners very well with expensive dinners and luxury trips, as is the standard in the housing market. This image clashed with that of an idealistic housing association catering for the poor. The case study of *Meavita* reports investments in expensive marketing campaigns, for example the installations of TV phones in homes of 3,000 clients without properly investigating the clients' needs for such equipment.

Secondly, both organisations were active in the field of expansion and diversification. The diversification strategy was applied to such extent that the activities far outreached the original social objectives, as was the case for *Rochdale* (e.g. building housing for expats in Spain). With regard to expansion, the organisation was simply too large to manage, which was the case for *Meavita*.

Thirdly, both organisations were involved in profit-making. Here, the case studies report a problem of culture. The conflicts and tensions both organisations faced were partly caused by the clash between the entrepreneurial spirit of the top management and the original social values cherished by the rest of the organisation. What is interesting in the story of Rochdale is that after the top management was sent away, the latter took control again, as if the roots of the organisations dug so deep that they could not be cut by a temporary eruption of money-grabbing in the period of real estate euphoria preceding the last financial crisis.

It is difficult to draw general conclusions from the stories of Meavita and Rochdale, as the cases might be juicy and dramatic, but not necessarily very representative. Yet, from a qualitative point of view the stories include some lessons for the governance of social markets, namely that the introduction of such markets might induce the relevant players to become so much engaged in commercialisation that they lose sight of the interest of their clients and, with that, eventually the public interest of realising social objectives. In the last chapter, we will come back to this by looking at the question how these lessons could translate in improvements in the governance structures of social markets.

C. The emergence of outside organisations: the (hi)stories of *Per Saldo* and *Woonbond*

Per Saldo

Per Saldo is a relatively young organisation. Its creation coincides with the introduction of the voucher system in the health care sector, the so-called personal budgets. Judging from its background, it is somewhat strange to qualify *Per Saldo* as an outsider. The organisation was actually set up by the government. The competent Ministry of Health, Welfare and Sports was of the opinion that people in need of health care should not be discouraged from acquiring a personal budget because managing such a budget was too complicated and involved a heavy administrative burden. To guarantee the accessibility of the personal budget scheme the Ministry decided to erect two associations, *Per Saldo* and *Naar Keuze*, to relieve budget holders of the necessary paperwork. These organisations were made responsible for making payments to health care providers and institutions, withholding income taxes and social security contributions and informing patients about the possibilities that personal budgets offer. Membership of one of these associations was mandatory for budget holders.

As from 1998, the administrative tasks which *Per Saldo* performed on behalf of budget holders were transferred to the Social Insurance Bank, one of the main Dutch social security institutions. After this transfer, the government nonetheless decided to safeguard *Per Saldo*'s survival by supplying the association with the necessary funds to allow the organisation to continue performing its remaining tasks. These primarily concern the information and consultation of budget holders, but also the empowerment of budget holders. By raising issues and advocating a more demand-driven and self-directed mode of care, the organisation furthermore acts as a voice for budget holders in general.

Although membership was not mandatory, the number of members kept growing, probably due to the explosive growth in the number of entitlements to a personal budget. Interestingly, *Per Saldo* also has the support of volunteers who fulfil various roles within the organisation.

Per Saldo's main source of income are state subsidies, which amount to approximately 40% of the organisation's revenues. The other sources of income are proceeds out of subscriptions, membership fees, revenues from products and projects granted by the state.

Woonbond

De Nederlandse Woonbond is a pressure group that represents tenants in the social housing sector. The organisation aims to influence legislation to secure affordable, good quality housing in a safe and clean environment. It strives for strong tenant organisation in order to give tenants more power to exert influence. Woonbond lobbies housing associations **with regard to**, for example, rent increases, and the government for more legal rights for tenants. It also supports individual tenants and organises education centres. The members of Woonbond consist mostly of local tenant organisations; these vary from large organisations representing thousands of tenants to local organisations representing one street or block of flats. The remainder of the members are individuals. Woonbond offers these individual members additional services, such as legal advice and support when they have a conflict with their landlord.

Woonbond started in 1990 as a fusion of three existing organisations representing tenants. The first half of the 1990s were difficult years for Woonbond, marred with financial problems and an outflow of employees. In time it managed to overcome its troubles and by the year 2000 the organisation was well-known in the housing world. Since its establishment in 1990, the organisation saw its membership grow from 100,000 to 1.4 million in 2010. It currently employs 48 members of staff. The financial resources of Woonbond consist primarily of membership contributions, some government subsidies and revenues from projects.

One of Woonbond's great successes is the introduction of the so-called Consultation Act (*Overlegwet*) in 1998. This act gave tenant organisations the legal right to consult with housing associations and it forced them to share detailed information with tenants about topics such as renovations, demolitions and maintenance. The act meant that the tenant organisations had been legally recognised as partners to be consulted in the management of social housing programmes. Woonbond also gained much publicity by awarding prizes for the best and the worst housing association.

The above stories show that the qualification of the two organisations as outsiders is a relative one, as both organisations are partly funded and as Per Saldo was originally **even** created by the government. Nonetheless, they are outsiders in the sense that they are not directly involved in the delivery of social services, but rather in critically monitoring social service bureaucracies on behalf of **the clients**. After all, their function is not only to provide services to their members, but also to monitor the behaviour of home care agencies and housing associations through public representation. In this sense they mimic the behaviour of consumer watchdogs that seek to protect people from corporate abuse.

Apparently, in the newly emerging social markets there is a need for such consumer-type watchdog organisations. Indeed, in our eyes the success of Per Saldo and Woonbond is **directly** connected to the emergence of social markets. As was explained earlier, **due to** structural changes and increased competition in the home care and the housing sec-

tor, organisations are forced to increase their size and their bureaucracy. A drawback of a larger bureaucracy is that the distance between the organisations and the citizens increases, or as it was put in our underlying case study report: 'Gone are the days when tenants actually knew the people running the associations, now all the contact they have is a letter at the end of the year telling them by how much the rent has gone up.' As a result of this impersonal relationship, citizens no longer feel represented by associations and are more willing to organise themselves as outsiders.

Interestingly, the changed relationship with the citizen also manifests itself in the governance structure of the organisations involved. In the past, housing associations and home care agencies were managed by a board of governors, which were mostly manned by 'responsible citizens with a track record in civic initiative'. These boards appointed the director, who was given the powers to conduct the daily management, but who remained firmly subordinate to the board. In the early nineties this model was changed. The new governance structure was to reflect the state of the art of corporate governance: the board of governors was renamed a supervisory council and the professional board of directors was given full power to engage in entrepreneurship. The competences and role of these councils of supervision is still subject to discussion.¹⁵ Also in the past many housing associations and home care agencies were real associations in the legal sense of the word. This implied that they had members, which meant that projects needed their backing to be accepted. This form of management became unpractical, if not impossible, when the associations became financially self-sufficient and needed a more professional, complex financial plan to ensure long-term stability. Nowadays, most housing associations and home care agencies have changed from being associations to being foundations, which have no members. In the social housing sector this again makes tenants feel less represented, which is another good reason for local tenant committees to join *Woonbond*.

With the emergence of new organisations such as *Per Saldo* and *Woonbond*, the involvement of civil society has shifted from provider institutions to these types of client organisations. Their status as civil society organisations is beyond dispute. They are not part of the formal government administration and not for profit, but also (and more importantly from a *de facto* point of view): they are characterised by a high degree of citizen involvement. What is different is that the new organisations do not have a specific religious or ideological background, but this does not make them less part of civil society.

One could furthermore say that the emergence of social markets has not (necessarily) resulted in less involvement of civil society, but rather in a different type of involvement. It may be so that organisations such as *Per Saldo* and *Woonbond* are 'single-issue' institutions, only representing the narrow interests of their members in a particular capacity (patients, tenants). But in doing so, they play an important role in controlling the behaviour of social service providers, thereby making sure that the commercial ambitions do not overshadow the interests of the stakeholders. Also, they sometimes take centre stage in the political debate concerning the architecture of the relevant sectors. In that sense, organisations like *Per Saldo* and *Woonbond* help giving legitimacy to new social markets.

¹⁵ Cf J. de Ridder, *Een goede raad voor toezicht* (in English: *Some Good Advice for Supervisory Boards*) (Boom Juridische uitgevers, The Hague, 2004).

V. LESSONS TO BE LEARNT: THE GOVERNANCE OF SOCIAL MARKETS

The challenge of social markets is to introduce free choice and competition without endangering the social values and objectives of the organisations involved. A strong involvement of civil society in the organisations is helpful for this purpose. However, as we have seen, the emergence of social markets implicates a change in civil society involvement: from direct involvement in the delivery of social services, to indirect watchdog involvement. Also the nature of the civil society groups themselves has changed. The new watchdog organisations are not vested in religion or ideology, but are rather single-issue client organisations. In this last chapter we discuss how the governance model of social markets can accommodate these changes in civil society involvement.

In the previous chapter we already referred to changes in the governance structure of the home care and housing sector: the power now lies in the hands of a professional board of directors, while the role of the governors has been reduced to a supervisory one. After scandals such as the ones of *Meavita* and *Rochdale*, much of the discussion in the Netherlands focuses on the question of how the supervisory boards can strengthen their position in order to make sure that the organisations live up to their public responsibilities. The debate led to the introduction of voluntary codes of conduct established by the various branch organisations active in social markets. Indeed, both the branch organisation of housing associations (*Aedes*) and the joint sector associations of health care organisations (*BoZ*) have developed their own governance codes.¹⁶ These codes include a variety of standards developed for both the supervisory councils and the board of directors to keep the organisations on the right track. The standards deal with issues such as the respective powers of supervisors and directors, the diversity among and the background of board members, remuneration (another contentious issue!), whistle-blowers and complaints procedures.

Both codes also contain paragraphs that are relevant for the involvement of civil society. They stress the need for dialogue between the organisations and stakeholders and representatives of clients. For that reason, they must be provided with necessary information and consulted if the board contemplates important policy, organisational and managerial changes. At least one of the representatives should be given the 'right to inquiry' within the meaning of Title 8, part 2 of the Dutch Civil Code.

The new governance codes are voluntary and it is unclear to what extent the self-correcting rules actually live up to their expectations. The permissiveness and the power of each organisation to come up with its own interpretation is a strength but also a weakness of voluntary codes of conduct. The intention might be good, but once confronted with the struggle for survival or seduced by the prospects of gaining advantages, the good intentions may well be forgotten; if man is inclined to all evil, this also applies to the members of the boards of social market organisations. A more structural, less permissive approach would be to adopt standards of good governance in legislation.

¹⁶ *Aedes*: governancecode woningbouwcorporaties 2011, available at www.aedesnet.nl/binaries/downloads/dossier-verantwoording/dossier-toezicht/governancecode-woningcorporaties-juli-2011-definitief.pdf; and *BoZ*: zorgbrede governancecode 2010, available at www.brancheorganisatieszorg.nl/doc/ZorgbredeGovernancecode2010BoZ.pdf.

In fact, the previous Dutch government proposed an act that does exactly that, namely the Social Enterprise Act (*Wet op de maatschappelijke onderneming*).¹⁷

For our subject the Social Enterprise Act is a very interesting proposal. Social enterprises are referred to as any legal person in civil law that pursues a societal purpose; these are typically the organisations dealt with in this article, but they can also be schools, hospitals, retirement homes, charities, etc. The act is based upon the recognition that social enterprises are in-between the government and the market and it acknowledges that for these organisations to continue to be rooted in the society, extra measures are required. For that reason, not only the board of supervisors but also the clients are given a stronger position in relation to the directors. In addition to other legally required representative organs, such as client councils (home care providers) or residents committees (housing associations), social enterprises must set up so-called stakeholder councils where a broad range of stakeholders (such as relevant interest groups, client organisations and municipalities) are represented. The act furthermore spells out the rights of stakeholder councils in terms of information and consultation.¹⁸

According to the original proposal, organisations are able to voluntarily adopt the social enterprise status. However, for the housing associations this freedom does not exist; they are supposed to have this status automatically, by operation of the act itself. Surprisingly, or perhaps unsurprisingly, Aedes, the branch organisation of housing associations, voiced strong opposition to the bill. As a matter of fact, so did BoZ, the branch organisation for health and home care. It is typical that both organisations, which have so loudly voiced their good intentions to work together with civil society in codes of conduct, are reluctant to submit themselves to the discipline of a new legislative framework, which has exactly the same intention! In a sense, this attitude casts a shadow over the sincerity of the good intentions formulated in of the voluntary governance codes of Aedes and BoZ.

In the meantime, the whole project of the Social Enterprise Act has been called into question. The previous Dutch minority government of Rutte-Verhagen, supported by the ultra-right freedom party of Geert Wilders, decided to withdraw the entire proposal in November 2010.

In our view there is nothing wrong with the government actually actively stimulating the involvement of civil society organisations, nor is it contradictory. In new social markets the government is no longer a direct provider of social services, but merely a distant regulator. In that sense there is less danger that the state encroaches too much on the free sphere of civil society; state action may also be geared towards its protection and promotion. With the emergence of new big commercial players in the social market, the involvement of civil society cannot be taken for granted. As the above case studies have shown, civil society must adjust, or even re-invent itself in order to continue to play a vital role. Government intervention can be directed towards the facilitation of this change. *Per Saldo* was originally even created by the government, but

¹⁷ Wet tot wijziging van Boek 2 van het Burgerlijk Wetboek houdende regels voor de vereniging of stichting tot instandhouding van een maatschappelijke onderneming, *Parliamentary Documents II* 2008-2009, 32 003 (in English: the Act to amend Book 2 of the Civil Code concerning rules for associations and foundations maintaining a social enterprise).

¹⁸ What remains unclear is the way these competences relate to the competences of existing legally required representative organs. The parliamentary documents state that it is up to the social enterprise itself to determine how these competences relate to each other (*Parliamentary Documents II* 2008-2009, 32 003, No 3, page 27).

then subsequently continued to grow largely on the basis of grass roots support. *Woonbond* also receives subsidies from the state. Giving client representation groups a formal status in the legal structure of social enterprises, is just another way to stimulate the creation of such groups and to give them increased legitimacy as ‘respected outsiders’.